c.f. 2004

(1)

(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 1668 /2004

PETITIONERS :

1. Rajendra Kumar Yadav
   S/o Shri Vishalram Yadav
   Age 24 years
   R/o Village – Amoda
   Th. – Navagarh
   Distt.- Janjgir Champa (C.G.)
2. Ramkirtan S/o Dileshawar Kashyap
   Age 27years
   R/o Village – Karra
   Post – Hardi hari (S)
   Th. – Navagar
   Distt.- Janjgir Champa (C.G.)

P.R. No. 1657/04
Presented by Shri Rishipendra Patel
dt. 21-6-04

VERSUS

RESPONDENTS :

1. State of Chhattisgarh
   Through – The Secretary
   Panchayat Gramin Vikas Vibhag
   D.K.S.Bhawan Raipur (C.G.)
2. The Collector, Janjgir
   Distt.- Janjgir Champa (C.G.)
3. The Additional Collector, Janjgir
   Distt.- Janjgir Champa (C.G.)
4. The Sub – divisional Officer Janjgir ,
   Distt.- Janjgir Champa (C.G.)
5. The Chief Executive Officer
   Janpad Panchayat Navagarh
   Distt.- Janjgir Champa (C.G.)
6. District Education Officer
   Janjgir Distt. Janjgir Champa

संभागीय आयुक्त, बिलासपुर संभाग
ह. के. सिंह
बिलासपुर

Received (OP)
21/6/04
INCHARGE
Constitution C

(2)
(4)

7. Gram Panchayat Navapara
Through – its Sarpanch
[Manharan Lal Gaanda]
R/o Village – Kewa Post – Amoda
Th.& Distt. - Janjgir Champa (C.G.)

8. Govindram Rathore
Secretary, Gram Panchayat Navapara, Th. Navagarh,
Distt. - Janjgir Champa (C.G.)

9. Ghasiram Gaanda S/o Bulakiram Gaanda Aged Bout 32 years
(Selection Committed Member's)
R/o Bhaisda, Post – Amoda
Th.& Distt. - Janjgir Champa (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

...titioner respectfully that the submit as under:

(78)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.1668/04

Rajendra Kumar Yadav & ano.

Vs.

State of Chhattisgarh & others.

O R D E R

Post for: 7/2/2005

Sd/-
Fakhruddin
Judge

79

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.1668/04

Rajendra Kumar Yadav & ano.

Vs.

State of Chhattisgarh & others.

Shri P.K. Patel, counsel for the petitioners.
Shri U.N.S. Deo, G.A., for respondents no.1,2,3,4 & 6.
None for other respondents.
Shri Azad Siddique for the intervener.

O R D E R

The petitioners have filed the present petition challenging the orders dated 23/2/2004 (Annexure-P/1) passed by the Sub Divisional Officer, Janjgir and dated 17/5/2004 (Annexure-P/2) passed by the Addl. Collector, Janjgir.

2. Briefly stated facts of the case are that the petitioners were appointed as Contract Teacher, Class III vide order dated 28/8/2003 and they were working on the said posts. It is stated that the intervener made a complaint against the appointments complaining the irregularities. It is further stated that the complaint has been decided by the Sub Divisional Officer vide his order dated 23/2/2004 that the petitioners have not been properly appointed and pursuant to that, the selection was cancelled. It is also stated that against the said order, a petition was preferred by the petitioners alongwith an application for stay before the Addl. Collector.

3. Learned counsel for the petitioners contended that when the matter came up for hearing on stay, the Addl.

(80)

Collector on 8/3/2004 did not pass any order on the ground that the election has been declared and as the election process is long, possibility of appointment is not there. The relevant portion of the said order is quoted below:

> *"..... क्योंकि चुनाव आयोग द्वारा आदर्श आचार संहिता लागू कर दिया गया है । अतः चुनाव समाप्ति तक नई नियुक्ति संभव नहीं है । अतः कोई स्थगन की आवश्यकता इस प्रकरण में न होने के कारण स्थगन के आवेदन पर विचार किये जाने का कोई औचित्य नहीं है । ....."*

The matter thereafter came up for hearing on 17/5/2004 and it was dismissed on the ground that the petition is not maintainable.

1. It is stated that there are Rules framed, namely, Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995. Under Rule 3 of the Rules, the provision of appeal and appellate authority is there and under Rule 5 of the Rules, there is a provision of revision. Rule 3 and Rule 5 of the Rules are relevant and are quoted below:

> *"3. **Appeal and appellate authorities**.- Save where it has been otherwise provided in the Act or rules or bye-laws made thereunder, an appeal shall lie,-*
>
> *(a) in the case of an passed by the Sub-Divisional Officer under any provision of the Act or rules or byelaws made thereunder-to the Collector.*
>
> *(b) in the case of an order passed by the Collector under any provision of the Act or rules or bye laws made thereunder-to the Commissioner.*

(81)

(c) in the case of an order passed by the Commissioner or Director of Panchayats-to the State Government.

(d) in the case of an order passed by the Panchayat specified in Column (1) of the Table below-to the authority specified in the corresponding entry in column (2) thereto.

***5. Revision.-** (1)(a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:*

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in sub-rule (1),-

(i) Where proceedings in respect of any case have been commenced by the State Government under sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit."

(82)

It is contended that under the Adhiniyam, one appeal or revision lies.

5. So far as the matter regarding hearing on stay is concerned, the matter should have been heard and order should be passed. The Court below declined to pass an order merely on the ground that the election process has started, which does not appear to be just. It failed to exercise the jurisdiction. This part of the order is not sustainable.

6. So far as the other question regarding dismissal of the appeal as not maintainable is concerned, it is also not justified. The matter is to be heard and the opportunity is to be provided to the parties.

7. Accordingly, the petition is allowed. The impugned orders dated 23/2/2004 (Annexure-P/1) and 17/5/2004 (Annexure-P/2) are set aside. The matter is remitted back to the court below for its hearing afresh.

8. The parties pray for fixed date for their appearance before the Court below. Accordingly, **4/3/2005** is given as the fixed date for the appearance of the parties. The matter will be decided as early as possible within six weeks from that date.

Sd/-
Fakhruddin
Judge

7/2/2005

Hande/-